reasons the court, discloses an intent to establish a new rule of public policy calculated to render this employment less menacing to human life. But this principle of construction seems to have had slight application beyond these cases. Another well-settled exception to the general rule is the absolute liability of railroads for fires caused by passing engines.[9] This construction rests partially on the dangerous character of the business,[10] and so is an illustration of the principle of the Illinois cases. But most reliance has been placed in the statutory provisions that the railroad shall have an insurable interest in the adjoining property.[11] Lastly, there is a long line of decisions holding railroads liable, in spite of the plaintiff's contributing carelessness,[12] for injury caused by the breach of a statutory duty to build fences or erect cattle guards. This rule is reiterated in another recent case. *Chapin* v. *Ann Arbor R. Co.*, 133 N. W. 512 (Mich.). These authorities proceed on the theory that such statutes are, in their nature, police regulations, for the protection, not only of persons and property along the route, but also of the passengers, whose safety can be insured only by offering the railroad some unusual inducement to keep its tracks clear.[13]

LEGALITY OF TRADE UNIONS AT COMMON LAW. — Most of the discussion to-day as to the rights of trade unions is concerned with the question of what acts a trade union can do, and what purposes it can effect without committing a legal wrong. But a recent English case raises the question whether a trade union, as such, is unlawful at common law. *Baker* v. *Ingall*, 132 L. T. J. 131 (Eng., C. A., Nov. 30, 1911). In a suit by a trade union against a member, relief was denied on the ground that the union was an illegal association.

In England, from the time of the earliest reported case[1] on trade unions until the acts of 1824–1825,[2] a union of employees formed for the purpose of increasing wages was regarded as a criminal conspiracy. The acts of 1825 and 1875[3] freed trade unions from the fear of indictment, and those

[9] Mathews *v.* Missouri Pacific Ry. Co., 142 Mo. 645, 44 S. W. 802.

[10] Bowen *v.* Boston & Albany R. Co., 179 Mass. 524, 61 N. E. 141.

[11] Rowell *v.* Railroad, 57 N. H. 132; Laird *v.* Railroad, 62 N. H. 254; Matthews *v.* St. Louis & San Francisco Ry. Co., 121 Mo. 298, 24 S. W. 591. In Peter *v.* Chicago & West Michigan Ry. Co., 121 Mich. 324, 80 N. W. 295, the court went on the principle that *expressio unius est exclusio alterius*, as the only excuse provided in the statute was the use of safe engines. In West *v.* Chicago & Northwestern Ry. Co., 77 Ia. 654, 35 N. W. 479, the court said the statute was intended to settle a vexed question in the law of contributory negligence by eliminating it as a defense.

[12] Flint & Pere Marquette Ry. Co. *v.* Lull, 28 Mich. 510; Harwood's Admx. *v.* Bennington & Rutland Ry. Co., 67 Vt. 664, 32 Atl. 721.

[13] See 2 THOMPSON, COMM. ON THE LAW OF NEGLIGENCE, § 2013. In Kilpatrick *v.* Grand Trunk Ry. Co., 72 Vt. 263, 47 Atl. 827, the court said, by way of *dictum*, that the cattle-guard cases must be explained on the ground that the plaintiff's negligence in letting his animals stray was too remote. But, when it is remembered that the defendant's negligence consists, not in running down the animals, but in failing to erect cattle guards, this explanation seems scarcely plausible.

[1] The King *v.* Journeyman-Taylors, 8 Mod. *10.

[2] THE COMBINATION ACT, 1824 (5 GEO. 4, c. 95); THE COMBINATION ACT, 1825 (6 GEO. 4, c. 129).

[3] THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 (38 & 39 VICT. c. 86).

of 1871 and 1876[4] legalized them for certain purposes, but they are still regarded as combinations in restraint of trade, and are, consequently, unable to enforce many of their rules and agreements.[5] If an important by-law of a union be indeed in restraint of trade, this position is entirely logical, for the rules of an unincorporated association are enforceable solely on principles of contract,[6] and, unless a contract be divisible,[7] the illegality of part of the consideration renders the whole contract invalid.[8] As to restraint of trade the English courts hold that any agreement by which the members are bound to obey their leaders' orders on trade matters is contrary to public policy.[9] Since most of the trade unions' demands have been granted them by statute, the courts have not felt inclined to favor the unions in interpreting the common law.

The earliest cases in America followed the English law in holding unions to be criminal conspiracies.[10] The courts soon came to feel, however, that laborers who combined to further their legitimate interests ought not to be regarded as criminals.[11] Having declared that combinations of workmen were not indictable, because not opposed to public policy, judges were naturally led to regard them as legal for all purposes.[12] It was evident, nevertheless, that unions, like all large combinations, might unduly oppress outsiders. Many courts have held, therefore, that the procuring by a union of the discharge of non-union men is a tort which equity will enjoin.[13] Thus it is evident that, in many states, the common law still regards some of the ordinary purposes of labor unions as illegal.[14] It might seem to follow that, where these purposes are expressed in the by-laws, the entire agreement of association between the members of an

[4] THE TRADE UNION ACT, 1871 (34 & 35 VICT. c. 31); THE TRADE UNION ACT, 1876 (39 & 40 VICT. c. 22).

[5] Hornby *v.* Close, L. R. 2 Q. B. 153. For those agreements which remain unenforceable to-day see THE TRADE UNION ACT, 1871, *supra*, § 4. The result of that act is that "the trade union is a lawful club, but a club of which the courts will not directly enforce the rules, *e. g.* as to payment of subscriptions and the like, as against any member." Professor A. V. Dicey in 17 HARV. L. REV., 527 note 2.

[6] Brown *v.* Stoerckel, 74 Mich. 269, 41 N. W. 921. See Levy *v.* Magnolia Lodge, 110 Cal. 297, 309, 42 Pac. 887, 891.

[7] It has been held that the benefit-society rules of a trade union cannot be separated from those which are in restraint of trade where there is no separate benefit fund and where a member may lose all the benefit advantages by the breach of a militant rule. Russell *v.* Amalgamated Society of Carpenters and Joiners, [1910] 1 K. B. 506. But it has been decided that where the general objects of a union are legal, minor unlawful by-laws will not make it an illegal body. Swaine *v.* Wilson, 24 Q. B. D. 252.

[8] Haynes *v.* Rudd, 102 N. Y. 372, 7 N. E. 287; Stewart *v.* Thayer, 168 Mass. 519, 47 N. E. 420.

[9] Rigby *v.* Connol, 14 Ch. D. 482; Russell *v.* Amalgamated Society of Carpenters and Joiners, *supra*.

[10] Trial of Journeymen Boot and Shoemakers of Philadelphia (Pamphlet); People *v.* Melvin, 2 Wheeler Cr. Cas. (N. Y.) 262.

[11] Commonwealth *v.* Hunt, 4 Met. (Mass.) 111. This result has been reached by statute in some states, for example Pennsylvania. PURDON, DIG., 13 ed., 4807, § 1.

[12] Snow *v.* Wheeler, 113 Mass. 179; Master Stevedores Association *v.* Walsh, 2 Daly (N. Y.) 1.

[13] Plant *v.* Woods, 176 Mass. 492, 57 N. E. 1011; Erdman *v.* Mitchell, 207 Pa. St. 79, 56 Atl. 327. *Contra*, National Protective Association *v.* Cumming, 170 N. Y. 315, 63 N. E. 369.

[14] American courts do not, however, regard as illegal an agreement by members of a union to obey an order to strike. See Thomas *v.* Cincinnati, etc. Ry. Co., 62 Fed. 803, 817.

unincorporated union should be held to be, in legal effect, a contract no part of which can be enforced. Many American unions, however, are incorporated,[15] and by corporation law a by-law which is in restraint of trade is merely void and does not render the corporation illegal.[16] Our courts generally apply the same rule to unincorporated unions. The question usually arises in suits brought by those who have been improperly expelled from labor unions.[17] The courts rarely go into the question of the legality of the by-laws, except to decide that a member expelled for violating an illegal by-law can be reinstated.[18] Thus the courts distinguish between the association and its illegal regulations. At least one decision, however, refuses reinstatement on the ground that the union is an illegal body.[19] This decision may be technically correct, but, according to the American view of restraint of trade, the main objects of a union are rarely illegal, and therefore, even by the English doctrine, the union itself would be held a legal body. Furthermore, the suggested distinction between incorporated and unincorporated unions seems undesirable.

RECENT CASES.

AGENCY — NATURE AND INCIDENTS OF RELATION — AGENT ACTING FOR TWO PRINCIPALS: EFFECT OF HIS MISREPRESENTATIONS. — The defendant authorized his agent to sell real estate on commission, and the latter sold it to the plaintiff, acting also as her agent in the transaction. Both parties consented to this double agency; but the plaintiff's signature was obtained by the fraudulent misrepresentations of the agent as to the terms of the contract. *Held*, that the plaintiff cannot rescind. *Austin* v. *Rupe*, 141 S. W. 547 (Tex., Ct. Civ. App.).

An agent may represent both parties in a transaction between them, if they have full knowledge of the circumstances. *Adams Mining Co.* v. *Senter*, 26 Mich. 73. But this relation is looked upon with suspicion, and if he is subsequently fraudulent, there is some authority for saying that the contract may be rescinded by either principal. See *New York Life Ins. Co.* v. *Fletcher*, 117 U. S. 519, 529, 6 Sup. Ct. 837, 841. The same result may be reached otherwise here. Acts of the agent done in the scope of each employment must be attributed to each principal severally, and an action for the acts imputed to one would be barred by the same acts imputed to the plaintiff. *Murdock* v. *Clarke*, 90 Cal. 427, 27 Pac. 275; *Nevada Nickel Syndicate, Ltd.* v. *National Nickel Co.*, 96 Fed. 133, 147. *Cf. Brown* v. *St. John Trust Co.*, 71 Kan. 134, 80 Pac. 37. But where the common agent makes fraudulent misrepresentations to one principal, he cannot be acting in the scope of his authority from that principal. For the agent must be looking entirely to his own interest, or that of the other principal, in a matter in which third parties are not concerned. *Allen* v.

---

[15] See Cotton Jammers' and Longshoremen's Association *v.* Taylor, 23 Tex. Civ. App. 367, 56 S. W. 553.

[16] See Inter-Ocean Pub. Co. *v.* Associated Press, 184 Ill. 438, 454, 56 N. E. 822, 826.

[17] Corregan *v.* Hay, 94 N. Y. App. Div. 71, 87 N. Y. Supp. 956.

[18] Schneider *v.* Local Union No. 60, 116 La. 270, 40 So. 700. *Cf.* Huston *v.* Rentlinger, 91 Ky. 333, 15 S. W. 867.

[19] Froelich *v.* Musicians Mutual Benefit Association, 93 Mo. App. 383. The union was held illegal at common law as well as by statute. See also Brennan *v.* United Hatters, 73 N. J. L. 729, 739, 65 Atl. 165, 169.